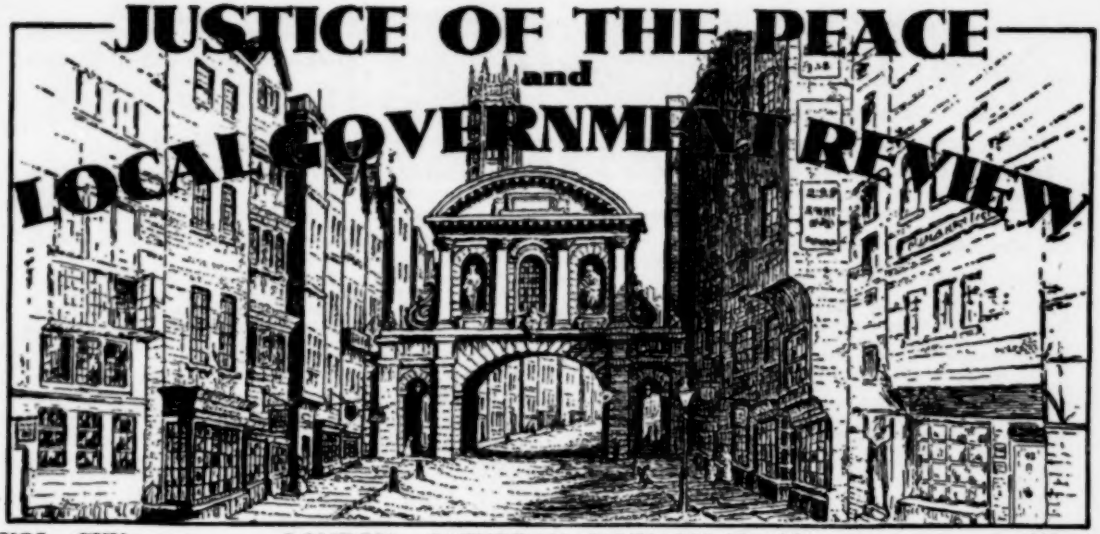

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Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

COUNTY BOROUGH OF SWANSEA

Appointment of Assistant Solicitor

APPLICATIONS are invited for the position of Assistant Solicitor at a salary within A.P.T. Grade VIII (£685—£760), the commencing salary to be fixed having regard to the experience of the successful applicant. Experience in local government administration is essential.

The appointment is terminable by one month's notice and is subject to the Local Government Superannuation Act, 1937, and the conditions of the National Scheme of Conditions of Service adopted by the Council. The successful candidate will be required to pass a medical examination.

The Corporation will make housing accommodation available if required.

Applications, stating age, qualifications and experience, and giving the names of two persons to whom reference can be made, must be delivered to the undersigned not later than Thursday, the 8th day of February, 1951.

Canvassing, either directly or indirectly, is prohibited and will be a disqualification.

T. B. BOWEN,
Town Clerk.

The Guildhall,
Swansea,
15th January, 1951.

HIS MAJESTY'S COLONIAL SERVICE

Federation of Malaya

A VACANCY exists for a Probation Officer in the Department of Social Welfare, Federation of Malaya.

The appointment is temporary for three years but in the case of a selected candidate having superannuation rights arrangements can be made for those rights to be preserved if the Home authority is willing. Salary including expatriation pay is $515 to $975 a month (£721 to £1,365 per annum). A cost of living allowance is also payable. The Malayan dollar equals 2*s.* 4*d.* sterling.

Free 1st class passages provided. Low rental for quarters. Low rates of income tax.

Candidates should be between twenty-five and thirty-five years of age. Married candidates would be considered but single preferred. Applicants should be fully qualified and experienced in the full range of Probation work. Should have recognized social science training, a knowledge of approved schools, remand homes and homes for children in need of care and protection and have experience of administration and of co-operation with boys' clubs, etc. Duties would include supervision of offenders released on probation, and the training and supervision of locally recruited probation officers.

Applicants should write forthwith for a form of application to the Director of Recruitment (Colonial Service) Colonial Office, Sanctuary Buildings, Great Smith Street, S.W.1, quoting reference 27259/44 and enclosing full details of their age, qualifications and experience.

MIDDLESEX COMBINED PROBATION AREA

Appointment of Male Probation Officers

PROBATION Officers (serving) required. Salary as Probation Rules, 1949-50 including London weighting. Pensionable, subject to medical standard and prescribed conditions. Application forms from Principal Probation Officer, 25, Victoria Street (South Block), Westminster, S.W.1, to be returned within fourteen days (quoting H.947, J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk to the County Probation Committee.

Guildhall,
S.W.1.

COUNTY COUNCIL OF MIDDLESEX

APPLICATIONS are invited from Solicitors of at least four years' standing, for a post of Senior Legal Assistant (A.P.T. Grade X, £850 by £50 to £1,000 per annum, plus London weighting). The appointment will be to the established staff and subject to the prescribed conditions of service, superannuation benefits according to the Minister of Health's Regulations, and the person appointed must satisfy the County Medical Officer as to medical fitness. Candidates must be competent advocates, well acquainted with procedure and practice of the various courts, and have had at least two years' experience in the legal work of a county or county borough council. Applications, giving the names of two referees, should reach me by February 12, 1951 (quoting H.995, J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk of the County Council.

Guildhall,
Westminster, S.W.1.

METROPOLITAN BOROUGH OF POPLAR

Appointment of Legal Assistant in the Town Clerk's Department

APPLICATIONS for this post are invited from Solicitors of at least two years' standing, on Grade A.P.T. VIII in the National Scheme of Conditions of Service. The duties will include conveyancing, preparation of contracts and agreements, and dealing with the procedure associated with compulsory acquisition of land. Previous local government experience will be an advantage. Forms of application, with full particulars of the conditions of appointment, can be obtained from the undersigned, by whom applications must be received not later than February 24, 1951.

S. A. HAMILTON,
Town Clerk.

Poplar Town Hall,
Bow Road, E.3.
January 9, 1951.

RICKMANSWORTH URBAN DISTRICT COUNCIL

Deputy Clerk of the Council

Committee Clerk

THE Council invite applications for the following vacancies :—

(1) *Deputy Clerk of the Council.* Salary Grade A.P.T. VIII. Applicants must be solicitors with experience of local government administration.

(2) *Committee Clerk.* Salary Grade A.P.T. III. Applicants must have experience of committee work and the preparation of agenda, minutes and reports and able to conduct correspondence : experience in a solicitor's office will be an advantage.

Applications for either appointment must (*a*) state age, whether married or single and give full details of education, training and practical experience, (*b*) give the names and addresses of three persons to whom reference may be made (testimonials must *not* be sent) and (*c*) be sent to me in sealed envelopes endorsed "Deputy Clerk" or "Committee Clerk" so as to be in my hands by noon on February 10, next.

Applicants must state if they require housing accommodation to be provided and the request will be considered.

C. G. RANSOME WILLIAMS,
Clerk of the Council.

Council Offices,
Rickmansworth.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (Hoylands), **Ex-Detective Sergeant.** Member of B.D.A. and F.B.D. DIVORCE—CONFIDENTIAL ENQUIRIES, ETC., anywhere. Over 400 agents in all parts of the U.K. and abroad. 1, Mayo Road, Bradford. Tel. 26823, day or night.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Planned Local Government ?

At the time of going to press with this note, we know no more about the projected Ministry of Local Government and Planning than the Government announced on January 18. For a year or more persons concerned in local government, who were in close touch with Whitehall, have known that changes were afoot, though the particular form they have taken was not expected. The popular press has fastened on the personal aspect—Mr. Aneurin Bevan's transfer to the Ministry of Labour being, so to speak, the star turn. But then Mr. Bevan is a star performer : whether he is seeking to make two houses grow when three grew before the war, or telling his opponents they are lower than vermin, what he does makes news.

Much more important than the transient moves of politicians is the (potentially) long term change associated with those moves, namely the transfer of housing and of the control of local government to the Ministry of [Town and Country] Planning. Housing is a self-contained function and it matters little which Minister answers for it in the House of Commons, and whether letters on the subject emanate from Whitehall, St. James's Square, or (as seemed probable at one time) Lambeth Bridge House. What matters is upon what method the Government and Parliament decide to carry it into execution, not what executive organ is employed.

The siting of " local government " within the governmental scheme is more important—just because " local government " is not a self-contained or single function. We have reminded readers previously of the report of Lord Haldane's Committee on the Machinery of Government, which would have treated all government as functional. This has, largely, been brought about by the creation of Ministries of Health, and Transport, Food, Fuel, and what-you-will. What Lord Haldane's Committee, despite its intellectual pre-eminence, failed to grasp was that some topics are too tough to be functionalized—local government is one of them ; finance another. Because local government existed, and could not be ignored, the Government in power in 1919 attached it to the newly formed Ministry of Health. From 1919 to the outbreak of war in 1939 (we might indeed say until 1949 and later) there was, as all our readers know, a Local Government Division in the Ministry of Health which—partly by the sheer force of necessity, partly through the force of character and the knowledge of the local government world possessed by those in charge of it—maintained a more or less separate identity, though not a separate theoretical existence.

But under English conditions, that is to say with the dominance of the House of Commons always the determining factor, those concerned with local government, its maintenance, control and reform, were always hamstrung by the superior political attractions of health, housing, poor law reform, or as the case might be. The creation of the Local Government Boundary Commission, abortive as it proved, was a step in the right direction—the direction of divorcing local government organization from the day to day pre-possessions in the mind of a functional politician. The Commission proved abortive because, concurrently with the four years' hard work it did, functional changes were going on apace. It is now evident that the time has come to review local government apart from, and at the same time with an informed eye turned upon, its functional implications. It has long been evident that no Minister of Health could, politically speaking, be expected to undertake the task. Whether the present Minister of Town and Country Planning possesses the necessary qualities was openly queried by the first leader in *The Times* on January 18. We are not interested in personalities, and we prefer to keep silence on that aspect of the change now in process. Upon its more permanent aspect, we are ready to welcome the undoing of the mischief done in 1919 when the Local Government Board was destroyed—if, indeed, the creation of a Ministry of Local Government and Planning does mean the undoing of that mischief. On the local government side, it is imperative (as we have said more than once before) to shake off the mentality of 1888. The county and county borough are not divinely inspired and immutable organisms, nor are they even the last word in human wisdom. On the governmental side, it is high time to resume the attention which used to be given before the first world war, to the best form of local government as part of the expression of the national will, instead of merely as a vehicle for producing roads or midwives.

The marriage of local government to " planning " may turn out no more than a politician's re-arrangement. But it may be the prelude to considering, for the first time in thirty years, the proper place of local government in the body politic, and if it so turns out we are prepared to welcome it.

Uniform Penalties

Criticism of the wide divergence between different benches in the matter of penalties for similar offences is constantly appearing in the press. That at times there is some justification cannot be disputed, although, as we are never tired of saying, people should be slow to criticise a bench who have seen and heard the parties and know all the facts, while the critics usually have to rely on a brief newspaper report.

It is sometimes suggested that justices should agree upon something like a system of standard penalties, for common offences. To those who are not experienced in these things, the idea is attractive, but anyone who has often been present in court and observed closely through a long list of cases must

have realized that neither offences nor offenders can really be standardized. Human beings, their motives and their circumstances vary so much that, they cannot be placed in neatly labelled categories and each ought to be dealt with as an individual, not as one of a class.

We were glad to see an article in *The Magistrate*, under the title "Uniformity and Unity," on this theme. As the writer says: "Human judgments will never be uniform. A mechanical calculator which could measure and allow for the gravity of the offence, the means of the offender, every possible extenuating or aggravating circumstance and the need and practicability of deterrance and reform—such a robot would be of fabulous complexity and, one suspects, far less reliable than the human mechanisms which do the work at present."

Complicated machines which punch holes in complicated cards and record numerous facts can be very useful in the compilation of statistics, and statistics can be of great value in the hands of competent people. Statistical tables illustrate facts and often provide material for further investigation, even in matters connected with human behaviour, and methods of treatment. Scientific investigators would be the last to claim that they could take the place of the judgment of men and women: all they can do is to assist in the process.

Since it is desirable that there should not be glaring inequalities in the matter of penalties for offences, something should be done where such inequalities are found to exist. The practical course is, as suggested in *The Magistrate*, for magistrates to meet one another, to exchange views and experiences, generally on a local but sometimes on a wider basis. Thus they learn from one another, broaden their views and, quite possibly arrive at something like a collective opinion to which all can give general assent, without fettering individual judgment. We have always felt this to be one of the most useful functions of the Magistrates' Association and naturally the writer of the article invites justices to take advantage of membership.

There is, of course, one other way in which some of the most noticeable disparities in the matter of penalties can be dealt with: penalties which seem unusually severe can be made the subject of appeal.

Prisons and Borstals

Under this title, an attractive and informative pamphlet was published in 1945. A new edition has just been issued, published by H.M. Stationery Office for the Home Office, price 2*s.* 6*d.*, net.

In a brief foreword, Mr. Chuter Ede says that this new edition has been made necessary by the many developments which have marked the progress of the prison and borstal services from the difficult conditions of the war years to the not less difficult but more constructive conditions of peace, and particularly by the important changes in prison administration and the new forms of treatment brought about by the Criminal Justice Act, 1948.

After referring to the report of the Gladstone Committee and the principles thereafter adopted in the treatment of prisoners, the Criminal Justice Act, 1948, and the prison rules made under it, are referred to. It is pointed out that in the forefront in the rules for training prisoners appears the statement "The purposes of training and treatment of convicted prisoners shall be to establish in them the will to lead a good and useful life on discharge, and to fit them to do so." One of the points contended for is that special training can best be carried out in the case of some prisoners in places other than ordinary prison buildings, since men can only acquire a sense of responsibility by exercising it. Experience, it is claimed, has shown that a high proportion of prisoners can be trusted in the open. Upon this matter there has from time to time been considerable disquiet when a prisoner has absconded from an "open" prison and by fresh offences alarmed local people. That is quite natural, but it is not proof that the system is wrong and ought to be discontinued; it only indicates the need for the greatest care and caution in selecting prisoners for this special privilege. "The open prison," says the pamphlet, "is beyond the stage of experiment: it is a well-established feature of this as of many other prison systems."

On the results of prison training generally, some statistics are adduced, with a very proper reservation as to their value, it being recognized that many social factors influence the conduct of a person who has been in prison or borstal and help to determine whether he becomes a recidivist. Some of the figures are instructive as showing the remarkably high proportion among those who serve a first sentence in a training or central prison who are not reconvicted. Figures relating to discharge from the Wakefield training prison are notably satisfactory.

Changing Methods

Attention is called to the changes in the law effected by the Criminal Justice Act, 1948, and the policy behind them. Classification of prisoners is now in the hands of the administration and not of the courts, individualization of treatment is attempted, and alternatives to imprisonment, especially in the case of the young are used where possible.

There is a useful description of the kinds of report furnished by the prison authorities relating to prisoners who may be eligible for corrective training or preventive detention and of what happens to those so sentenced. The objects of supervision and after care are stated in terms which show that the authorities have a clear realization of its importance and possibilities.

A principal object of the Criminal Justice Act, to keep young people out of prison would be helped by the establishment of remand centres and detention centres, but these are not yet available. There has been speculation as to what detention centres will be like. It is here stated: "Life at a detention centre will be strenuous and brisk. Full advantage will be taken of such educational and remedial possibilities as are available within the limited time."

Changes in the law as to borstal sentences are stated, and some statistics relating to reconvicted ex-borstal inmates are given, again with due reservation, but with a statement, which seems justified, that probably seven out of ten boys and more than eight out of ten girls are not reconvicted more than once for several years after release. Considering the difficult material, these are encouraging results.

The pamphlet contains much interesting information about the treatment of prisoners and borstal inmates, their employment, discipline and control. As to the difficult problem of payment for work done, experiments have proved that even the prospect of receiving from 6*d.* to 2*s.* 6*d.* a week is an incentive to good work. That, however, is a long way from the payment of real wages out of which a man might help to keep his wife and family, a plan which many people would like to see tried, though it must be admitted that there are real difficulties to be overcome.

This pamphlet should certainly be read by all magistrates and others concerned with the administration of the criminal law. It is so written and illustrated that it will also appeal to that much larger section of the public which is becoming increasingly interested in the treatment of offenders and especially in what happens to those who are deprived of their liberty, both while they are in custody and after they are set at liberty.

Probation in Surrey

There are some interesting reflections in the report of the Probation Committee for the County of Surrey for the period ended October 31, 1950. After a brief statement of the kinds of after-care work which probation officers may be required to undertake in accordance with the provisions of the Criminal Justice Act, 1948, some figures are given showing that the volume of work has not yet become large. As to ex-prisoners, the report says: "To a prisoner about to be released the idea of complete freedom is apt to outweigh all other considerations and few it would seem are likely at that stage to welcome any provision that might appear to fetter their independence; but when once they are set free and left to re-establish themselves in the world some may find they need the guidance and assistance which they refused while still in prison. In the result a number of ex-prisoners have voluntarily sought out the probation officer and asked for his help."

With regard to approved school cases, it seems that practice varies at present. Some schools like to do their own after-care work, while others are glad to avail themselves of the services of probation officers.

A much more difficult problem will arise in the future, when prisoners released on license from preventive detention have to be supervised. The report suggests that this type of work will call for qualities not necessarily required for the satisfactory performance of the other duties of a probation officer. Additional officers will certainly have to be appointed, and though the committee is against specialization to the exclusion of other types of work, it thinks it would be well for a small number of officers to engage in this particular kind of after-care.

The results of probation work for the year appear thoroughly satisfactory. Of the cases under supervision from all courts eight *per cent.* of the males and less than six *per cent.* of the women and girls proved unsatisfactory during the period of supervision.

There has been considerable reduction in what are described as cases of voluntary supervision. This is ascribed to a wider use of the care or protection provisions of the Children and Young Persons Act instead of resort by worried or ineffective parents to a probation officer for advice and assistance. The decline has, in fact, been going on for some years.

Town and Country Planning

The Town and Country Planning Bill (Bill 53) introduced on December 12, 1950, will no doubt pass into law early in the opening session of 1951. Its purpose is technical and narrow. Clause 1 proposes to transfer certain work for the making good of war damage, from the class of work which by para. (a) of the proviso to s. 12 (2) of the Town and Country Planning Act, 1947, is not "development" (and for that reason does not require permission under s. 12), to the class of "existing use," subject to its falling within the cubical content named in para. 1 of sch. 3 of the Act of 1947. Where such work has already been done since that Act was passed, it is to be deemed that planning permission has been granted. Clause 3 proposes parallel provision for Scotland.

Clause 2 is designed to amend the provision made by the Act of 1947 for enforcing conditions attached to a permission for development, by closing the gap in s. 23 to which we drew attention in articles at 112 J.P.N. 764 and 113 J.P.N. 186. Absence of any Scottish clause dealing with this point suggests that the Town and Country Planning (Scotland) Act, 1947, has not a corresponding gap.

Free Seats for Councillors

We had hoped that among bad old customs, disused before now in local government, was that of a local authority's reserving seats, to be occupied gratuitously by its members, at theatrical and similar performances given in concert halls and similar places under its control. The parallel custom of granting to councillors free passes on municipal transport was checked, if not killed, soon after 1930, partly by the necessity of obtaining licences from the Traffic Commissioners under the Road Traffic Act, 1930, for the local authority's public service vehicles; partly through action by the Director of Public Prosecutions. Some at any rate of the Commissioners took a firm line with that abuse, and nationalization will have finished it, if it still survived in 1947. The free seats for municipally provided entertainments, or for entertainments provided by private enterprise in municipal buildings, may not be scotched so easily. Where the proceeds of the entertainment, or of letting the building, are credited in accounts laid before the district auditor, he could take action if the facts were brought to his notice, but they may not be. Moreover, most of the places of entertainment in question have, before the passing of the Local Government Act, 1948, been situated in boroughs where the general accounts did not come under district audit. Section 132 of that Act, which because of the general difficulties of the time has not as yet produced much activity, may lead to a wide extension of publicly provided entertainments and, unless the practice of giving free seats to councillors is firmly resisted, the evil may be correspondingly extended. When the practice has been challenged in the past, local authorities have sometimes endeavoured to defend it by sheer special pleading, claiming that it was the duty of the council to see that nothing indecent or unseemly was said or sung in a performance held upon municipal premises. Apart from being irrelevant, and offensive to many of the distinguished performers who nowadays can be heard upon such premises, the excuse was never sound, since the attendance of the local authority's entertainments manager or other paid employee would have been enough. If it was thought there might be reason for complaint, a surprise visit by the chairman or a couple of members of the appropriate committee, entering incognito as ordinary seat holders, would be far more effective than the reservation of a block of seats.

Matters may perhaps be brought into the open by a case reported in the London press at the beginning of the year, where a pantomime is being staged by an outside company in premises belonging to a large local authority. This authority has been a pioneer in using public resources to provide first class entertainment, and its premises are, it seems, capable of being used for "trying out" plays destined for the West End. Those premises are let, or sometimes let, on terms which involve sharing profits with visiting theatrical or music hall producers, and the producers of the pantomime now in progress are said to have protested at a condition of the contract, which stipulates for the grant of free admission, except on Saturdays and Bank Holidays, to all or any members of the council. According to the Municipal Year Book, the council comprises fifteen aldermen and forty-five councillors, so that, if all of them used their privilege but once during the run of a particular entertainment, there would be sixty sterilized seats—to say nothing of the fact that, according to the newspapers, aldermen and councillors have been allowed in practice (though this is not stipulated in the agreements for letting to the visiting producers) to take their wives also without payment. Incidentally the exclusion of Saturdays and Bank Holidays from the condition imposed, of which exclusion the chairman of the council's entertainments committee is said to have made a point in a press interview,

blows out of the water any contention, if such a contention be advanced, that the purpose is to safeguard public morals or propriety. The stipulated free seats are thus shown to be nothing but a naked privilege. The takings for sixty seats, leaving the wives out of the account, might therefore be lost, with a consequent effect both on the profits paid into the rate-fund and on the percentage payable to the performers. Whilst the producers are entitled to be interested in this aspect of the matter and ratepayers also might properly show an interest in it, we are concerned on wider grounds.

To apply the term " corruption " to the arrangement we have been describing would not accord with ordinary language. There can hardly be any secrecy about it ; the whole borough must know of the arrangement made in favour of aldermen and councillors—and herein lies the saddening thought, that the whole borough presumably takes it as a matter of course that its elected representatives reserve to themselves this perquisite, and public opinion tolerates the evil.

Whether the law, despite this apathy, could step in and bring the practice to an end is a question which, so far as is shown by the recent paragraphs in newspapers, nobody has yet considered. Before 1933, we should have thought it plain that the whole council was disqualified by virtue of s. 12 of the Municipal Corporations Act, 1882, where a contract made with the council for the use of a municipal building for public entertainments reserved to aldermen and councillors a right to free admission. Less plain, that the same was the result where the council engaged performers and was itself, by its servants, the producer of the entertainment. The Local Government Act, 1933, got rid of this disqualification, and instead s. 76 (1) of the Act imposed a penalty (first) upon a member of a local authority who, having a pecuniary interest in any contract or proposed contract or other matter considered at a meeting at which he is present, fails to disclose that interest, and (secondly) upon a member who takes part in consideration or discussion of, or votes upon, any question relating to a contract or other matter in which he has a pecuniary interest.

Now, we do not know what is the course of business of the local authority which has been mentioned in the newspapers, or of others who make similar contracts, in regard to their contracts with outside producers for the provision of entertainments. We suppose the actual negotiation of each contract could be left entirely to the entertainments manager or manager of the building, with advice from the town clerk—though more probably (we should have thought) a committee or sub-committee would take an active part. Equally, where a local authority itself provides entertainments, the manager could be left to do the work (even here, by the way, there will be contracts with the individual performers, and these may involve profit sharing terms) or a committee or sub-committee could come into it. Whatever be the course of business ; whatever the degree of delegation to officials, there must in the nature of things be at some stage or stages consideration by the council or by a committee, for the purpose of settling the scope of authority to be given to the responsible officials, or ratifying what the latter have arranged ; at this point, therefore, s. 76 of the Act of 1933 seems to us to come into the picture. The first limb of subs. (1) need not be considered here ; since every member of the council knows that he and every other member is going to get free seats for entertainments to which other people are only admitted upon payment, formal disclosure by each in turn of his pecuniary interest in the matter would be an idle piece of play acting. But consideration and discussion, in contract or committee, of the matter of the entertainments, is quite another thing. That there is in such a case contravention of the second limb of the subsection seems to us to be beyond argument. Even though local public opinion be so fully reconciled, to the giving of this petty perquisite to aldermen and councillors, that nobody has yet moved to put an end to it, the practice might very well be considered by the Director of Public Prosecutions under subs. (7) of the section. *Lumley's* note at p. 835 of the eleventh edition contains an appropriate reminder that the Director has moved in the past against members of a local authority who voted themselves free passes on the authority's trams. Free passes to entertainments are exactly parallel.

MILK AND DAIRIES REGULATIONS, 1949

A QUESTION OF VENUE

From time to time courts of summary jurisdiction have to deal with questions of venue. They often have little merit as they have no bearing on the question of whether or not an offence has been committed and can usually be put right by proceedings being taken in the proper court. Occasionally, however, it is not too easy to discern which is the proper court, and this is the position when proceedings are brought under reg. 26 of the Milk and Dairies Order, 1949.

By the regulation, " every . . . distributor shall ensure that every vessel (including the lid) used for containing milk shall, *immediately before use by him*, be in a state of thorough cleanliness . . ." The penalty for non-compliance with this regulation is contained in reg. 33—a fine not exceeding £20, or in the case of a subsequent conviction a fine not exceeding £100 or three months' imprisonment, or both such fine and such imprisonment. Regulation 26 is invoked where a milk distributor supplies milk to a customer in a dirty bottle. The problem as to venue arises where the distributor's bottling depot is in jurisdiction A, and the supply takes place in jurisdiction B. Are proceedings to be brought in the court for area A, or in that for area B ?

The argument in favour of proceedings being taken in area A is based on the words in reg. 26 printed above in italics. It is said that the whole of Part IX of the order in which reg. 26 appears, is concerned with empty receptacles—tankers, churns, vessels, etc., and that the object of Part IX is to ensure the cleanliness of those receptacles and the suitability of the receptacles for cleansing purposes. It is therefore argued that, so far as a bottle of milk is concerned, reg. 26 is aimed at ensuring that the bottle is clean before the milk is put in it, and the words " immediately before use by him " can only mean immediately before the distributor fills the bottle. Since that is in area A it is there that the offence is committed and the court for area B has no jurisdiction to try the offence.

The argument in favour of jurisdiction in area B is as follows : By reg. 8 every distributor (the relevant definition of this word is " purveyor of milk "—*see* reg. 2 (1)) must register with the local authority. He need have no premises in the area of the authority but he may not carry on the trade of a distributor in that area unless he is registered. " Use by him," of a bottle containing milk in area B constitutes an offence, it is argued, if immediately before such use in that area the bottle is not clean. It is immaterial, it is said, that there was a prior use by him in area A. The object of the order is to ensure the cleanliness of

the milk supplied to customers, and until a customer is supplied with a bottle of milk there is no " use " by the distributor.

It is, however, difficult to accept this contention. It seems quite clear that Part IX of the regulations is concerned with the cleansing of empty receptacles, and methods of cleansing are laid down. The word " immediately " in reg. 26 must refer to the moment before the distributor first makes use of a bottle and that must be the moment before it is filled with milk. If the filling is in area A, then that is where the offence is committed. There does not appear to be much substance in the argument relating to supply to a customer. The supply of milk in a dirty bottle is amply covered by the provisions of the Food and Drugs Act, 1938, and it seems in any event, totally unnecessary to introduce a customer into the transaction, as the regulation only relates to use by the distributor. Indeed if this argument is to be accepted a distributor who has a dirty milk bottle on his premises in area A can maintain that he has not " used " it, since he intends to deliver it to a customer in area B. It seems inescapable that " use " in this regulation must refer to the operation which results in the supply of milk to a consumer, and that operation begins when the bottle is filled with milk. " Immediately before use " must then mean immediately before the bottle is filled, and, if this is so, jurisdiction must be in area A and not area B, in the example we have cited.

THE SUSPENDED PENALTY

By H. A. HAMMELMANN, *Barrister-at-Law*

At the annual meeting of the Magistrates' Association last October Lord Oaksey, expressing certain doubts about the adequacy of the available methods of dealing with criminal offenders, mentioned, *inter alia*, a suggestion made to him by Sir Leo Page, namely, that the present probation system might be strengthened by the " suspended sentence " as used in France and other countries. Since the Continental system has not previously received much attention in this country, it may be useful to give an outline of its development and present practice, the more so since the innovation suggested might strengthen the efforts of the courts and of probation officers to keep first offenders out of further trouble.

The probation system—*i.e.*, release or discharge of certain offenders whose guilt has been established, upon specified conditions—first found statutory expression in the United States, by a law of the State of Massachusetts enacted in 1878 which established, at all courts of criminal jurisdiction, paid officials whose duty it was to be " to recommend to such court the placing upon probation of such persons as may reasonably be expected to be *reformed without punishment*." It was thought, rightly, that such a step would give first offenders and chance criminals an opportunity to turn back from the road to crime before it is too late, and would at the same time avoid the danger of contamination inherent in short term prison sentences.

In England, powers to avoid imprisonment in certain circumstances was granted, first for juveniles, later also for adult offenders, to the courts by the Summary Jurisdiction Act, 1879, and the Probation of First Offenders Act, 1887. It was only in 1907, however, that the Probation of Offenders Act (now superseded by the relevant provisions of the Criminal Justice Act, 1948) extended the system of conditional discharge to all offences triable summarily or upon indictment, made it applicable not only to first offenders but to all who by reason of character, age or extenuating circumstances might profit from probation, and authorized the appointment of full-time probation officers. From the outset, probation was conceived not as a punishment, but as reformatory treatment: probation orders were made " *in lieu* of imposing a sentence of imprisonment "; indeed, though this has now been altered, in courts of summary jurisdiction no conviction was recorded at all before the 1948 Act when a probation order was made. Even under the 1948 Act it is still true to say that, whether an offender is placed on probation under s. 3, or the court arrives at the opinion that such supervision is inappropriate or impracticable and discharges the offender under s. 7 on the condition that he commits no further offence for a period not exceeding twelve months, *no penalty whatever* is inflicted. It is only when the probationer fails to comply with the order that he may again be brought before court to be then sentenced for his original offence.

It is on this point that the system in force in many Continental countries differs fundamentally from English law. Conditional discharge and probation so obviously met the need for less rigidity in the administration of criminal justice that they soon found introduction elsewhere in Western Europe. Belgium was the first country to follow the Anglo-American experiment by a law of May 31, 1888, and in August, 1889, the subject was discussed and adopted at the Brussels Congress of the Union Internationale du Droit Penal. As a result of the discussions at Brussels, however, an important modification was suggested: the congress expressed a preference for conditional suspension of the *execution* of sentence to conditional discharge *before* sentence.

When, accordingly, " sursis a l'execution " was introduced into French criminal procedure by a law of March 26, 1891 (named, after the Senator who moved it, " loi Bérenger "), it was designed, like probation in this country, to enable the courts, when dealing with casual, as opposed to habitual or at least repeated offenders, " to spare them the dishonour involved in imprisonment " when this seemed desirable, but differed from the English system in the fact that it follows *after* the offender has not only been found guilty, but actually been sentenced to a term of imprisonment. The sentence imposed upon the accused is a real sentence, but it might be called " redeemable " in the sense that execution does not follow immediately, but is suspended pending good behaviour, and that the offender has still a chance to work his passage home, because, after the lapse of a certain period of time, the execution of the sentence will be altogether abandoned and complete rehabilitation follows. If, on the other hand, the offender comes once again into conflict with the law, or otherwise breaks the terms of his conditional discharge, he will automatically have to serve the sentence imposed upon him for his original offence, quite apart from and in addition to, such sentence as a court may inflict upon him for any subsequent offence.

This system has now been in force in France for almost sixty years and has proved its value in practice. The suspended penalty has found wide use in French courts in the case of first offenders and is probably applied in the majority of all but the more serious crimes. A similar conditional suspension of the execution of sentence is regulated in the Italian Code of Criminal Procedure of 1931, though on a more limited scale, and has recently been introduced, at the suggestion of the Allied Occupation authorities, in some of the Laender of Western Germany. A law which came into force in Bavaria on July 24, 1947, repays

in this connexion careful study as the most recent and most detailed legislative measure in this field. Here, unfortunately, it is only possible to quote one section, s. 30, which provides that conditional suspension of the whole penalty shall take place whenever

> "the personality of the accused, his antecedents and his behaviour after the offence give rise to the expectation that he will in future lead a regular life and conduct himself in a lawful manner, provided that immediate execution of the sentence is not required either for reasons of public policy or on grounds arising out of the person of the injured. It is above all to be employed where the offence sprang from economic difficulties and the offender has since been able to find work."

Continental lawyers speaking from experience believe that the actual solemn imposition of a sentence of imprisonment, which will be executed automatically and without any further court proceedings if the probationer fails to honour the terms of his discharge, helps to keep down the repetition of minor offences. The knowledge that a specific sentence hangs over them and will *inevitably* fall upon them in its full rigour if another offence is committed within the period fixed has, it is claimed, a considerable educational and deterrent effect on all but hardened delinquents, especially on young offenders who have not previously come into conflict with the criminal law.

Every probation system is based on the belief that it is possible to induce offenders to abstain from further criminal activities without having suffered the penalty, and that to restrain criminal impulses is vastly preferable to any subsequent reformatory treatment, however successful. Unfortunately, in the absence of any actual sentence, an offender placed upon probation in our courts was not unnaturally tempted to consider himself almost as good as acquitted. The effectiveness of probation has also suffered from the fact that it has popularly come to be considered as a proper solution only in prosecutions for more or less trivial offences.

Experience in the United States, in what is called "parole prediction," has shown that various features of a prisoner's career before imprisonment, and above all his character for industry and steadiness at work, can be used with advantage and with a considerable degree of accuracy to foretell his behaviour after release from prison. Similar thorough investigations undertaken by probation officers before the trial, or if after conviction at least before sentence, might make it possible to base on firmer grounds the courts' decision whether to deal with an offender by probation, corrective training or imprisonment, a decision in which the prospects of future behaviour must be given at least as much weight as the seriousness of the offence. Imposition of sentence of imprisonment, followed by conditional suspension of the penalty (either with or without supervision by probation officers) which will give the offender an opportunity of rehabilitating himself, might well strengthen the available probation system and would constitute an impressive last warning to those who can still be redeemed.

CHARGES FOR SERVICES

Charges are made for many services by local authorities—in the case of major authorities there is a variety almost as bewildering as the different scales for recovery often used by one and the same authority. It is exceedingly odd but not at all impossible that one ratepayer may receive accounts for services rendered to himself or his family by different departments of one local authority whereby substantially different amounts of his wages are adjudged to be available to meet the demands made. It is interesting and somewhat alarming to speculate what embarrassment might ensue if such scales were compared in open court in the course of proceedings for recovery of the charges. In most local authorities where this peculiar position exists the reason is that separate committees have made separate scales and their efforts have never been co-ordinated.

Whilst not suggesting that exactly the same scale can govern payment for every service or benefit received, we do venture to say that time would be well spent by many local authorities on a review bent on co-ordinating and rationalizing present scales.

In making such a review a number of matters would require consideration, and regard would have to be paid, of course, to statutory and other decisions. Thus the authority has no discretion to exercise on certain services, for example, fees for registration of births, deaths and marriages, for weights and measures inspections, and for searches of local land charges registers are prescribed by statute or statutory instrument, and no abatement of the prescribed fee is allowable to persons of small income.

In other cases, whilst the authority have full discretion, they may decide as a matter of policy that no charge should be made. For example, not all have used to the full the powers of recovery given to them by the National Health Service Act, 1946: in particular the power to make charges for services provided under s. 28 of that Act for the prevention and care and after care of illness is not exercised by all health authorities.

In other services where the principle of charging has been adopted, varying considerations may decide that only a part of the cost of the service should be recovered. This is a matter of policy upon which each local authority will be guided by the individual views of its members which, in turn, will be influenced by many considerations, for instance, the extent to which the particular service benefits only one section of the community or how far it may be said to be of general benefit, even if such benefit is indirect. On this point it is interesting to recall that in June, 1948, the County Councils' Association, the Association of Municipal Corporations and the London County Council adopted a report prepared by their financial advisers suggesting scales for the assessments of charges for certain health services, in which the following principles were enunciated:

(*a*) There should be a clear identification of the kind of service for which a charge should be imposed, and it should be accepted as a principle that charges should be made in all cases except where adequate justification exists for abatements or complete exemption;

(*b*) No charge should ordinarily be made, or at least it should be considerably reduced, if the facility is provided in the interest not of the sufferer, but of other members of the community, *e.g.*, if it assists in the segregation of tuberculous persons;

(*c*) No charge should be made for treatment or facilities provided under any one of these sections if it could be obtained by the applicant free of charge under another section of the Act. Dental treatment for expectant and nursing mothers is a case in point;

(*d*) The replacement or repair of articles occasioned by neglect or carelessness on the part of the patient or recipient should be paid for by him;

(*e*) The charges by clinics for articles which are in short supply but which otherwise the applicant would be expected to obtain through the normal channels should ordinarily represent the full cost incurred by the local authority plus an addition

for handling expenses. In such cases the benefit to the applicant is the certainty of being able to obtain the articles. The charges should be confined, in the main, to nutrients, medicaments being free ;

(*f*) Liability for payment of charges would ordinarily devolve upon the husband, as head of the household, for services or articles provided for his wife, his child, himself, or the family as a whole. Children's allowances should be treated as available income of the household ;

(*g*) If the amounts involved are small the aim should be to collect, as far as possible, at the time of attendance at the clinics. Where, however, payment by instalments is necessary, schemes of assessment and collection whose imposition would entail excessive overhead costs should be discountenanced. Instead, a scheme of flat-rate charges should preferably be substituted, even if on a slightly lower basis ;

(*h*) Cases of prolonged sickness for whom facilities are provided over a considerable period should be subject to reassessment at fairly frequent intervals in order to ensure that no hardship is occasioned by the authority's charges, and a second scale weighing less heavily on the family income, for use after three weeks, is suggested.

Once the decision has been made as to the services which are to be the subject of charges the next question is how the charges are to be fixed. First it must be decided how the income of the family is to be determined and what deductions should be made from gross income to give the figure upon which to base the assessment.

The report already cited mentions that a real difficulty arises in determining the income to be taken into account in assessing the charge payable for the provision of a domestic help. Many local authorities are familiar with the case of an aged widow who applies for a domestic help and has only her old age pension to be brought into account in assessing the charge, although she may have living with her a son and daughter-in-law, both working and earning substantial wages. If the old age pensioner is accepted as the applicant, her income only would be assessed together with a small contribution (generally not exceeding 7*s.* per week) assumed from each of the other two members of the household, and the services would be supplied free or at a very low rate of charge, even if the total household income warranted a very much higher charge and possibly recovery of the full cost of the service.

In cases for which accommodation is provided under Part III of the National Assistance Act, 1948, the very detailed provisions of the second schedule of that Act are required to be observed in assessing ability to pay. The provisions enumerate sources (such as certain war savings, some benefits under the National Insurance Act, 1946, workmen's compensation or disablement benefit, sick pay from a friendly society or trade union, and superannuation allowances) which are to be wholly or partly disregarded and provide to what extent capital resources (so far as not wholly excluded) are to be taken into account as income. In their report the financial advisers recommended two scales, the first of which was based on " weekly income " without any disregards and the second of which provided for income to be adjusted in accordance with the second schedule of the National Assistance Act, 1948. The second scale also assumed a contribution not exceeding 7*s.* a week from each non-dependent earning member of the household other than the householder.

It is interesting to compare the scale drawn up by the Ministry of Education in respect of students at training colleges. The Ministry's scale does not concern itself with disregards other than disability pensions and assistance given by local education authorities, but goes into some detail as to what is to be included as income—the most noteworthy items being the value of free quarters, meals, etc., and the value of an owner-occupied house. The Ministry do not, however, assume any contribution to be made by non-dependent members of the household.

It was also observed that of nine scales in use by a local authority for its various services, three provided for assumed contributions from lodgers, whilst the other six did not ; all, however, provided for an assumed contribution from non-dependent relatives.

Similarly, practice varies as regards the items treated as charges upon income and allowed to be deducted from gross income before making the assessment. Of the two scales recommended by the financial advisers one makes provision for no such deductions, whereas the other provides for " exceptional and unavoidable items of household expense " to be deducted at discretion, citing rent and rates and compulsory insurance as examples. The Ministry of Education scale (referred to earlier) does not allow the deduction of rent and rates but accepts compulsory contributions to a superannuation fund or alternatively voluntary contributions or life assurance premiums up to a maximum of five *per cent.* of earned income, ground rent and mortgage interest in respect of owner-occupied property and other annual charges (determined by the right to deduct income tax).

Of the nine scales referred to above, four provided for National Insurance and rent (or mortgage instalments) and rates to be deducted in full, and five made no such provision.

Examination of scales used by seven other local authorities revealed that all allowed the deduction of rent and rates, six allowed the deduction of National Insurance contributions, five allowed other " exceptional and unavoidable household expenses "—usually at the discretion of an officer of the local authority, two allowed hire-purchase payments, or a part thereof, two allowed the deduction of income-tax, two allowed contributions towards the support of dependent relatives and single instances were found of allowances of the following items :

(*a*) Expenses incurred in earning wages (travelling expenses, trade union subscriptions, etc.).
(*b*) Voluntary insurances and friendly society contributions.
(*c*) Schedule A tax and ground rent.
(*d*) Wages of housekeeper.

The next thing to be determined is how much of the net income is required for the essential maintenance expenses of the family and is consequently not available for payment of charges for services. According to the recently issued " *N.A.L.G.O. Clarion* " a general division officer, married with two children, requires approximately £6 per week for essentials after providing his rent and compulsory deduction for National Insurance. The National Assistance (Determination of Needs) Regulations, 1948 and 1950, under which the National Assistance Board operate, computes requirements (other than rent) as follows :

A person living alone	..	26*s.* per week
A husband and wife	..	43*s.* 6*d.* per week
For each child under sixteen an amount varying from	}	8*s.* to 12*s.* per week according to the age of the child.

Among local authorities' scales opinions differ considerably : an examination of a number of scales compiled by various local authorities revealed that allowances for one parent varied from 24*s.* to £3 10*s.*, for two parents varied from 30*s.* to £4, and the allowances for children varied from 7*s.* 6*d.* to 15*s.*

Very much higher allowances are provided by the Ministry of Education in their scale related to students at training colleges, namely £300 per annum for parents and £50 per annum for each child ; even higher are the allowances recommended by the same Ministry for adoption by local authorities in relation to

university awards—£500 per annum for parents and £100 per annum for each child. The circumstances of these awards may be considered such as to justify substantial departures from scales of allowances relevant to the other services, and to render comparison abortive.

Lastly, having determined the net income which is adjudged to remain after essential needs have been met, the final point to determine is how much of that net income should be taken? The financial advisers recommended that in scale A (articles other than medicaments) the whole of the remaining net income should be taken up to the cost of the article and in scale B (convalescent homes and domestic helps) the following proportions should be taken:

Third of the first £ of net income Half of the second £ Two-thirds of the third £ Whole of the remainder	Except that in the case of prolonged illness the payment for the fourth and subsequent weeks should be one-third of the first £ and half of the remainder.

The Ministry of Education scale takes five *per cent.* of the net income in the early stages and ten *per cent.* from the higher income groups, and this has in many cases been taken as a basis by local education authorities in drawing up their scale for university awards.

One scale was observed (relating to the children's service) under which the various charges (rent, etc.) were deducted from the gross income and then from the resulting net figure a deduction of twenty *per cent.* was made in respect of the standing charges of the household which would not be reduced by reason of the removal of one member. (It is understood that the figure of twenty *per cent.* had been arrived at by reference to accounts of personal consumption expenditure contained in the Economic Survey of 1950.) The resulting net figure after this deduction was then considered to represent the running expenses of the members of the family and the proportion attributable to a child taken into care was (subject to a "hardship" minimum) to be the amount of the contribution. A reservation was made that the contribution must not be in any event less than the amount of family allowance or addition to unemployment pay, sickness benefit, etc., attributable to the child.

This limited test examination has revealed enormous differences in scales now in operation. It is not suggested that scales should be completely uniform, but there is an unanswerable case for ensuring that net income is always calculated in the same way in the same local authority, and possibly in all local authorities. Uniformity would not necessarily extend to the amount of net income collected, as different councils would have different opinions as to the amount of income necessary for subsistence, and the proportion of the remainder which should be considered available for the local authority's charges. On this point it is interesting to note that an examination of the estimates of six county councils for the year 1950/51, and of the accounts of three county boroughs for the year 1949/50 showed that the income from charges for domestic helps expressed as a percentage of gross cost of the service varied as follows:

County	A 10%	County Borough	A 10%
„	B 14%	„ „	B 14%
„	C 14%	„ „	C 33%
„	D 21%		
„	E 28%		
„	F 33%		

MANDAMUS TO A MINISTER OF THE CROWN *EX PARTE* MANNING AND OTHERS

[CONTRIBUTED]

In the King's Bench Division on November 21, 1950, the Divisional Court granted an application for an order of *mandamus* directed to the Minister of Labour and National Service, compelling him to deal with an alleged trade dispute reported under the Conditions of Employment and National Arbitration Order, 1940.

On August 3, 1950, notice of the existence of a trade dispute was given to the Minister by a chapel of the National Union of Journalists. The trade dispute concerned the question whether Kemsley Newspapers Limited, as employers, were behaving in a fair and equitable manner in connexion with disputes which arose between individuals and the management. After an interval, during which correspondence had passed, the applicants wrote to the Minister stating that any steps which the Minister had taken had not resulted in a settlement, and requesting that the dispute be referred to the National Arbitration Tribunal. The Minister, in reply, said that he was still not clear what was the precise nature of the dispute, and that it did not appear to be a trade dispute as defined in the order.

The applicant's solicitors informed the Minister that they would advise the applicants that the dispute was not a trade dispute within the meaning of the order, whereupon the Minister, in the beginning of November, replied that perhaps a trade dispute did exist after all, although in later correspondence the Minister still refused to agree that it was, in fact, a trade dispute. The application was then made.

Article 2 of the order requires that "if any trade dispute exists or is apprehended, that dispute, if not otherwise determined, may be reported to the Minister and the decision of the Minister as to whether a dispute has been so reported to him or not and as to the time at which a dispute has been so reported shall be conclusive for all purposes."

Trade dispute is defined by the order as meaning "any dispute or difference between employers and workmen, or between workmen and workmen connected with the employment or non-employment, or the terms of the employment or with the conditions of labour of any person." Article 4 of the order provides that "..... a worker shall not take part in a strike in connexion with any trade dispute unless the dispute has been reported to the Minister in accordance with the provisions of art. 2 of this order and twenty-one days have elapsed since the date of the report and the dispute has not, during that time, been referred by the Minister for settlement in accordance with the provisions of that article."

During the period August to November the Minister still had not made up his mind as to whether a trade dispute existed. The applicants, by reporting the matter had, perhaps, put the matter so far as their position was concerned, beyond argument. They might, therefore, have considered themselves entitled after the twenty-one days to take what action they wished to take, *e.g.*, by way of strike, but they were obviously in a difficulty because

the Minister was in correspondence with them upon a doubt in the Minister's mind as to whether he could properly accept the reference, as of a trade dispute under the order.

Whether or not the matter constitutes a trade dispute appears to be one of law to be decided by the Courts. The difficulty in the case, concerned art. 2 of the order, which appears to make the decision as to whether a dispute has been reported or not, and the time of reporting, a matter for administrative decision by the Minister. That the matter is a trade dispute has now been decided by the Court. *Mandamus* issued to compel a Minister of the Crown is, to say the least, unusual, but the result was, apparently, that if the Minister did not within twenty-one days accept the reference as of a trade dispute, the applicants could consider themselves free to take other lawful action as appeared to them most likely to serve their ends.

" EPHESUS."

MISCELLANEOUS INFORMATION

MR. JUSTICE LYNSKEY ON SENTENCE

Addressing Manchester City Magistrates recently, Mr. Justice Lynskey, who posed the general question: What should be a prisoner's sentence? said, in part, " Strictly, the object of all sentences is the protection of the public. The courts exist to substitute the rule of law for private vengeance and to protect citizens and their property, and to secure to them such peaceful enjoyment of liberty, property and security as the law allows.

" The protection of the public involved three considerations in imposing sentences: (1) the reclamation of the accused; (2) punishment for the offence; (3) as a deterrent to others.

" In the days when the system of detection and arrest was weak and when justices were their own policemen, they, and they alone, had the power of arrest.

" It was felt that the only way in which the public could be protected was, if I may use a modern word, by the liquidation of the criminal. Then the punishment for all common law felonies was death. That persisted right up to the days of George IV. Common law felonies were treason, rape, murder, arson and grand larceny. The theft of an article valued at more than 1s. was punishable by death."

The old law was equally harsh for misdemeanours and was designed for the protection of the public. In those days it was hard to catch a man, and when he was caught there was no real hope of preventing further offences excepting by passing extremely severe sentences as a deterrent to others. The term of imprisonment for misdemeanour was without limit. For any common law misdemeanour a court had power to send a person to prison for life and it also had the power, either in addition to or substitution for, to levy a fine for any amount. Magna Carta had contained a clause that penalties should not be excessive, and in the Bill of Rights of 1688 it was provided that excessive fines should not be imposed nor cruel and unusual punishments be inflicted. This provision was introduced in the Bill because the floggings inflicted on Titus Oates and Bedloe and those concerned in the " Popish Plot " were considered too severe as was the fine of £40,000 imposed on John Hampden the Younger for his part in the Rye House plot. According to prevailing values a fine of £40,000 then would be equivalent to £1 million today.

Until quite modern times, imprisonment, and particularly imprisonment with hard labour, was a severe punishment because shotdrill, crankmill, the treadmill and solitary confinement were everyday accompaniments of imprisonment. Many prisoners preferred death to long imprisonment of that nature. Even more recently the " cat " and the whip were ordered for crimes of violence, being thought by many to be a real deterrent. They no longer exist.

In modern times new ideas prevailed. The policy of the Legislature appeared to be that the public could best be protected by the reclamation of the offender and it is only after all other methods of reclaiming the individual offender have failed that he should be kept within bars for a long period of time.

No youth under twenty-one is regarded as beyond redemption, and the Criminal Justice Act, 1948, provided that he should not be sent to prison unless no other method of dealing with him was appropriate, and justices at petty or at quarter sessions must state their opinion as to why no alternative method of dealing with him was appropriate.

When youths of sixteen—seventeen years of age indulged in premeditated crimes of terrible violence on inoffensive people, especially the old and weak, Lynskey, J., felt there was no other method of dealing with this type of crime except long terms of imprisonment. In his opinion it did no good to send anyone under twenty-one or even twenty-five for short terms of imprisonment. In the report of the Prison Commissioners it was stated that during the past year 1,362 youths and 192 girls of twenty-one or under were sent to prison for short terms of imprisonment of three months or less. Lynskey, J., thought that it was worse than useless to send young people to prison for one, two or three months. The fear of imprisonment was a real deterrent but when offenders had been in prison for only one or two months they found prison was not as bad as they thought it would be and because the stigma of prison attaches to them anyhow they lose their fear.

The first offender may be conditionally discharged, and this involved him behaving himself for twelve months if he was to escape the penalty of the offence he had committed. Each magistrate would form a personal view but the speaker believed conditional discharge was not very useful for any young offender whether it be a youth or a man in his early twenties. The effect was too short. It was a useful form of sentence for an older man who, having borne a good character for some years, had slipped but was not likely to get into trouble again. It was sufficient to get him under control for twelve months.

But in the case of youths or young men, he preferred that they should be put on probation because such an order may last three years and it gave the court a larger power of control during that period. It meant that they had not only to behave themselves throughout that period but they were also subject to the supervision of the court through the probation officer.

There was another method which one could find useful and where a probation order was entirely suitable. That was the case of the older man, between thirty and forty, who did not very often respond to probation, or of people going into the Services where the opportunity for the probation officer to give assistance was limited or non-existent. In those circumstances it was as well to apply the old sentence they used to use before " conditional discharge "—the sentence of binding over at common law to come up for sentence if called upon. This, which could be imposed for more than two years, enabled courts to put in conditions of the binding over which one was not allowed to include in a probation order and it enabled one to have a good deal of control. But it could only be done with the consent of the accused.

Then there was the fine. Judges and justices have wide powers for giving time for payments. Fines were a useful penalty, particularly when a man or boy was in good work; especially where there are youths and young men earning quite large wages. It is as well to restrict their spending capacities and particularly if they are inclined to frequent too many licensed premises or milk bars. (One gets as much crime from milk bars today as from licensed houses.)

A man whom the courts had already treated leniently, if he came back, it was obvious that leniency had not been a success. Unless some time had elapsed since his last appearance and he had made an effort to go straight or to respond to leniency, it was far better to give him a sharp lesson.

Otherwise the accused got the impression that the law was ineffective. But even worse, his friends formed the opinion " Every dog is entitled to its first bite."

But he did not suggest that this should be adopted as a hard and fast rule. The individual and his offence must be considered; also as far as possible what the accused's environment had been and what prospects there were of helping him discovered.

Should the accused be under twenty-one, and he was re-appearing, the most useful sentence was borstal. Lots of people did not like borstal, but what was useful was that the boys do not like borstal either. To sit in the Court of Criminal Appeal or to sit as a single judge in the law courts, it was amazing to hear the number of applications for leave to appeal against borstal sentences on the ground that the youths ought not to be sent to borstal and that they prefer to go to prison. As long as borstal is a deterrent, it ought to be maintained, because at borstal an offender was subject to discipline and other efforts which are made to improve him in spite of himself.

The sentence of corrective training could only be imposed on a man who is over twenty-one and who was convicted on indictment for offences carrying a sentence of two years or more and he must previously have been convicted of offences which carry the same penalty. In the case of corrective training it did not matter whether the convictions were on indictment or at petty sessions and it did not matter whether he was sent to prison or fined so long as it was a conviction.

These were the circumstances which qualified a man for corrective training, but before the court could impose such a sentence it must consider any report or recommendations made by the Prison Commissioners as to the prisoner's mental and physical suitability for such a sentence. When the Act embodying this power of the courts was first operated, justices at petty sessions and recorders at quarter sessions took the view that if a man had qualified by reason of convictions he ought to be sent for corrective training.

Nothing was further from the policy of legislature in this respect. Corrective training was designed to deal with that class which will benefit from it. It was not a substitute for an ordinary sentence of imprisonment. Before any man was sent for corrective training the report of the Prison Commissioners must be considered. If the report advised against such training it was useless to send the offender away for it. If it was in favour, the prisoner should not be sent unless the court was satisfied that he was a suitable subject who was likely to benefit to such an extent that he became a useful citizen.

Because a man is sentenced to corrective training it did not follow that he will undergo it. He would be sent to Reading where there is a sort of "clearing house" establishment, where he was examined, observed and tested as to his suitability for the proposed training. If the Reading officials concluded he was not suitable then he would be sent back to prison.

The courts had to be very careful before they ordered such a sentence to ensure that the prisoner was an appropriate subject. That was why they had to investigate the Commissioner's report and get assistance from the probation officers who knew something of the prisoner's background. It was a serious matter because sentence for such training must be for not less than two years and for not more than four years.

There were many offences where the maximum sentence was two years. In the case of sexual offences and indecent assaults upon girls between thirteen and sixteen the maximum sentence was two years.

But if such an offender was sent for corrective training he was sent for four years. The result was that if he was rejected for the "new university of corrective training" he had to go back to prison for four years—which was double the maximum.

A further reason for the care in passing these sentences was that the accommodation for such a training was rather limited, and if there was an increase in the number of recommendations for this kind of training during the next year or so, the Commissioners would be unable to find accommodation for them.

Corrective training is a specialized form of treatment. Those receiving it are made to work hard on useful work, and they are taught some form of trade or activity they can follow when the training ends so that they become social instead of anti-social. One even envies them sometimes, for facilities are provided for week-end football.

Preventive detention can only be ordered on a person of over thirty who had been convicted on indictment of an offence carrying two years' imprisonment and who has been convicted on three previous occasions and on the last two of these has been sentenced to a term of other imprisonment, borstal instruction or corrective training. A period of preventive training is for not less than five or more than fourteen years. To pass a sentence involves a confession of the law's failure so far as that particular offender is concerned. If it is necessary it should be a long sentence of not less than eight years.

This special sentence is only to be used for special classes. Because of the length of time involved it was a severe punishment. But the treatment for the sentenced man will be much easier than ordinary imprisonment. For a few years he served normal imprisonment and then he was put on forms of work for which he was suited and then his conditions became much easier in the last few years of his term and an effort was made to try to rehabilitate him for re-entry into ordinary life.

But it was a sentence which should only be passed when it was necessary for the protection of the public. It ought not to be passed unless the court was satisfied that the man was wholly beyond redemption and was determined to lead a life of crime; it ought not to be passed unless courts got a really hopeless case. If courts got a man who had many sentences but who was making an effort and had been leading an honest life for three or four years then imprisonment ought to be passed rather than preventive detention for in the case of the older man he was going away more or less for the rest of his life.

There are cases, however, where it was essential to protect the public by imposing preventive detention as a last resort. For instance, in the case of a man who had done a sentence of penal servitude for three, five or seven years and had now committed an offence accompanied by violence.

Finally, Mr. Justice Lynskey said that sentencing a person was a difficult thing, and for himself it was always a matter of anxiety, and he asked the courts never to pass a sentence as a matter of rule or custom. There was always that danger. He remembered that in Liverpool, where ships in the Mersey emitted smoke for more than the lawful period, there was "a scale of charges" of 10s. to £5, but if the defendant had a "clean bill of health" for twelve months, it started again at the beginning of the scale. They did not want that rule applied in the case of sentences because it was important for every man before the courts even if it was only a minor offence.

They were most anxious to do what was best for the accused, for the public and for the country. He had known benches to whom it was a matter of form what they should pass as a sentence. Every individual should be treated in an individual way.

ROAD TRAFFIC OFFENCES

Addressing a meeting of justices and others at Kidderminster on December 28, Mr. J. P. Eddy, K.C., Stipendiary Magistrate for East Ham and West Ham, said he did not think that to increase the maximum fines for road traffic offences was a remedy for the appalling number of accidents in which motor vehicles were involved. It was unusual for magistrates' courts to impose even the maximum fines at present allowed by law. He felt confident that an effective way of dealing with bad driving would be to impose short spells of disqualification. Already magistrates had power to disqualify an offender on a first conviction for careless driving for one month, and on a second conviction for three months. It was, however, probably true to say that few justices were even aware that they possessed this power. Certainly the use of it was virtually unknown.

In regard to defective homes and juvenile delinquency, they would have largely to depend upon the work of probation officers. But he thought there was room for the services of "civic visitors"—good sensible women who could, if invited to do so, offer their advice to troubled wives and mothers before difficulties became really acute.

WAR DAMAGE CLAIMS UNDER THE PLANNING ACT, TIME LIMIT

The Central Land Board believe there may still be some owners of war-damaged property, entitled to claim a payment under the Town and Country Planning Act, 1947, who have not yet done so.

These claims can be made on certain "total loss" properties where the War Damage Commission assessed a value payment, and must be lodged with the Board before February 1, 1951.

Value payments were assessed on the basis that the owner of a blitzed site could realize any extra market value obtainable for it due to its suitablity for someting more valuable than the replacement of the destroyed building. Sites with this extra development value had a lower value payment, sometimes nothing. The planning Act has now removed development values from private ownership, and owners who are affected can claim.

The Board have published an explanatory leaflet on these claims —S.I.A. (War Damage), obtainable from the local offices of the Board and the War Damage Commission. Payments are in cash and include interest. They are separate from the £300 million on which claims had to be lodged by June, 1949.

ROAD ACCIDENTS—SEPTEMBER, 1950

The return of the number of persons reported to have died or to have been injured, as a result of road accidents in Great Britain during the month of September, 1950, is as follows:

Classification of Persons	Total		
	Died	Injured	
		Seriously	Slightly
Pedestrians—	*	†	
(i) under fifteen	55	506	1,660
(ii) fifteen and over	148	827	2,086
Pedal cyclists—			
(i) under fifteen	9	220	709
(ii) fifteen and over	62	734	2,633
Motor cyclists	85	986	1,999
Drivers	26	408	1,327
Passengers (sidecar or pillion)—			
(i) under fifteen	2	10	40
(ii) fifteen and over	29	204	596
Passengers (other vehicles)—			
(i) under fifteen	5	91	441
(ii) fifteen and over	48	707	2,707
All persons 1950	469	4,693	14,198
1949	378	3,920	11,841

* Includes one horse rider.

† Includes one boy aged eleven who was driving a stolen car.

NEW COMMISSIONS

CARMARTHEN COUNTY

Benjamin Edward Davies, Llygadenwyn, Llanybyther.
Miss Emily Sarah Evans, Mount Pleasant, Capel Evan, Newcastle Emlyn.
Herbert Gray Hughes, Tynewydd, Llanfihangel-ar-Arth.
David Gwyn James Jones, Parknest, Newcastle Emlyn.
John Alcwyn Jones, Clynricked-fawr, Maesycrugiau.
John Gwynnant Jones, Sycamore Street, Newcastle Emlyn.
Mrs. Ann Lewis, Rhoslwyn, Pentwelly, Llandyssul.
John Hugh Williams, Ashcroft, Llanybyther.

COUNTY OF LINCOLN (PARTS OF LINDSEY)

John Andrew, South Ferriby, Barton-on-Humber.
Willie Auty, 124, Doncaster Road, Scunthorpe.
Walter Ratcliffe Brickell, 37, Bruce Street, Scunthorpe.
Mrs. Margaret Barr Cawthra, 16, Northholme, Gainsborough.
Mrs. Hilda Mary Clark, The Pastures, Saxilby.
Bert Coulson Coles, Toresbi, Bilsby Road, Alford.
Mrs. Mary Lina Cottingham, Grimsby Road, Bimbrook, Lincoln.
Miss Marjorie Grace Dunkley, 1, Trafalgar Avenue, Skegness.
Miss Ethel Catherine Eyres, Queen Street, Market Rasen.
Ernest Field, 21, Highfield Avenue, Immingham.
Dr. Robert Evelyn Holme, Fircroft, Wrawby, Brigg.
Mrs. Joyce Elizabeth Humphreys, Messingham, Scunthrope.
William Lavender James, St. Vincent's, Crosby, Scunthorpe.
Richard Laceby, 27, Exeter Road, Scunthorpe.
Dr. Michael Colin Lavin, 21, Albert Road, Cleethorpes.
Arnold Machin, 57, Peveril Avenue, Scunthorpe.
John Penistan Maltby, Tofts Road, Barton-on-Humber.
Percy Marshall, Hemingby, Horncastle.
Sir John Denton Marsden, Panton Hall, Wragby.
Archibald Miller, Cliff Garage, Welton, Lincoln.
John Henry Muskett, The Lodge, Morton, Gainsborough.
Thomas Henry Needham, 6, Beverley Grove, Skegness.
William George Needham, Moat Farm, Bilsby, Alford.
Frederick William Norman, Station Road, Firsby, Spilsby.
Wilfred Pottage, Railway Station, Brigg.
George Balydon Read, Langton Manor, Horncastle, Lincs.
Mrs. Edith Barbara Readymartcher, M.B.E., Bradford Avenue, Cleethorpes.
Thornally Samuel Roughton, Friskney, Boston, Lincs.
George Robert Sinderson, 89, Queen's Parade, Cleethorpes.
Edwin Donald Sykes, Brentwood, Hollingworth Lane, Epworth, Doncaster.
Donald Frederick Taylor, 63, West Street, Horncastle.
Thomas Henry Turnbull, Lansdowne House, Althorpe, Scunthorpe.
Ernest Walter Wood, 22, George Street, Gainsborough.
The Earl of Yarborough, Brocklesby Park, Habrough, Lincs.

SOUTHAMPTON COUNTY

Frank Raymond Byerley, The Towers, Bedhampton, Havant.
Howard George Carrell, The Orchard, Lower Road, Bedhampton, Havant.
Sidney Cyril Marley, 10, Bosmere Gardens, Emsworth, Havant.

PERSONALIA

APPOINTMENTS

Mr. G. S. Green, clerk to the Manchester petty sessional division of the county of Lancaster since 1948, has, in addition, been appointed clerk to the Eccles borough justices. Mr. Green was admitted in 1929 and practised for some years in the Isle of Wight. He later held appointments as prosecuting solicitor to the Manchester corporation, and senior court clerk to the Manchester city justices.

Mr. Malcolm Arnold Bains, LL.B., second assistant solicitor to the Sunderland corporation, has been appointed assistant solicitor to the Nottinghamshire county council. Mr. Bains, who was admitted in 1945, is twenty-nine years of age and was solicitor to the Taunton corporation from 1946 to 1949, when he took up his appointment with the Sunderland corporation. During the war he served as a pilot in the Royal Air Force with the rank of flying officer. Mr. Harry Bernard Williamson, third assistant solicitor to the Sunderland corporation, has been appointed to the post vacated by Mr. Bains.

NOTICE

The next court of quarter sessions for the borough of Stamford will be held on Wednesday, January 31, at 11.30 *a.m.*

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 6.

TOP-SIDE AND SUET

A limited company carrying on business as multiple butchers was charged at Dorchester county magistrates' court on December 9, 1950, first, with selling meat of less weight than was purported to be sold contrary to s. 1 of the Sale of Food (Weights and Measures) Act, 1926, and secondly, with applying a false trade description to goods contrary to s. 2 (1) (*d*) of the Merchandise Marks Acts, 1887. The company pleaded guilty to the first charge and it was stated on behalf of the prosecution that a delivery to a school of 18 *lbs.* of chuck steak minced was weighed and found to be half a pound under weight. A fine of £3 was imposed in respect of this offence.

The particulars of the second charge alleged that the company unlawfully by means of an invoice applied to 2 *lbs.* 3*ozs.* of suet forming part of a consignment of butchers' meat purporting to weigh 19 *lbs.* 3 *ozs.* sold by the company, a false trade description, *viz.*: "Top-side."

For the prosecution, it was stated that there was no criticism of the defendant company for sending suet with the meat. The essence of the prosecution's case was that a given quantity of meat was purported to be delivered and described as top-side. It was found to consist not wholly of top-side but partly of suet.

"Top-side," said the prosecutor, "is properly sold at 2*s.* 2*d.* *lb.* and suet at 1*s.* 4*d.* *lb.* If suet was sent out with the meat it should have been described and charged for as suet and not as top-side."

A number of witnesses were called for the prosecution including the cook in charge at the school, the Regional Enforcement inspector of the Ministry of Food, the district meat agent, and the inspector of weights and measures for Dorset County Council.

The enforcement officer told the court that the branch manager of the defendant company told him "We are allowed to put the fat on these joints, because the customer will grumble if the meat is too lean." The witness agreed in cross-examination that there was no suggestion that the fat had been added from another animal, and he also agreed that the matter had been reported to the Ministry of Food and that the Ministry had decided not to prosecute.

The inspector of weights and measures in cross-examination stated that he did not know that the county council had renewed for 1951 the valuable contract of the defendant company to supply meat to schools within the county since the incident forming the subject of the charge.

Counsel (Mr. B. Stuart Horner) opening the case for the defendant company, stated that the sole issue was whether there was anything wrong in including fat or suet, which belonged to the same animal, with the meat. "The top end of the animal," he said, "is lean and not only is it desirable from the point of view of the butcher that the fat content should be distributed over it, but it is in the interests of the housewife that there should be some piece of material . . . . . fat or suet . . . . which will help in the cooking."

Counsel maintained that this had been the custom in the trade for the past fifty years at least, and he stated that ever since the Act of 1887 had been brought into force there had never been a single prosecution for selling suet or fat with meat.

The President of the Association of Multiple Meat Traders and Master of the Company of Butchers in London stated that he had had fifty years' experience in the trade and it had always been the practice to put in fat with the lean.

A former area meat agent of the Ministry of Food also with fifty years' experience told the court "there is nothing wrong in the eyes of the Ministry; there is nothing wrong in the eyes of the trade." Another witness, a practical butcher in business at Exeter, described the defendant company's action as being "quite the normal business of the trade."

Mr. Horner described the prosecution as "misconceived" and asked the court to say that the description used was a perfectly honest and fair description.

After a short retirement, the chairman of the magistrates, commenting that it had not been an easy case to decide, announced the decision of the court to convict and a fine of £5 was imposed and the company was ordered to pay 13*s.* 6*d.* costs.

COMMENT

The writer apologizes for reporting another case involving a false trade description so soon after the case relating to "meat dog biscuits" which appeared at 114 J.P.N. 710, but it is understood that this case has caused great interest amongst butchers and the decision is clearly one of considerable importance.

The case illustrates clearly the wide difference which may exist between the strict legal interpretation of a statute and the manner in which it is interpreted by the laity, and it recalls the difficulty encountered in the recent war of convincing soldiers that "scrounging" was almost always legally interpreted as "stealing" within the meaning of s. 1 of the Larceny Act, 1916.

To a lawyer it is abundantly clear that the action of the defendant company in selling as top-side (2*s.* 2*d.* per *lb.*) over 2 *lbs.* of suet which sells at 1*s.* 4*d.* per *lb.* was a contravention of s. 2 (1) (*d*) of the Act.

On the other hand, it was clearly proved by the expert witnesses called for the defence that the custom of padding out a joint with suet is widely practised in the trade and has acquired through long user at least a veneer of respectability!

The writer suggests that it is the degree to which the padding is carried out which should determine whether or not a prosecution is to be initiated.

(The writer is greatly indebted to Mr. W. R. Breed, chief inspector, Weights and Measures, Dorset County Council, for information in regard to this case.) R.L.H.

PENALTIES

Rochester—January, 1951—using a falsely franked betting letter knowing it to be forged—fined £5. To pay £4 16*s.* 6*d.* costs. Defendant, a fifty-three year old temporary postman, aroused suspicion by sending in ten consecutive correct slips. His custom was to frank an envelope before starting work, wait for the racing results in the evening paper, complete the slip and send it off.

Marylebone Magistrate's Court—January, 1951—assault occasioning bodily harm—fined £5, to pay £10 costs. Defendant, a forty-four year old bus driver, argued with a sixty-four year old lorry driver in a public house. The defendant struck the lorry driver causing two black eyes, a cut on one eye and a cut on the tongue which necessitated five stitches.

West London Magistrate's Court—January, 1951—stealing four hats and several articles of clothing valued together at £6 6*s.* (two defendants)—each sentenced to fourteen days' imprisonment. Defendants, sisters aged thirty-one and twenty-five respectively, visited a Kensington store. The magistrate said that their visit was "nothing but an expedition to plunder a shop."

Horsham—January, 1951—causing unnecessary suffering to a greyhound—fined £3. To pay £2 costs. Disqualified for holding a dog licence for twelve months. Defendant a farm labourer. The dog was found by an R.S.P.C.A. inspector in a small shed in a deplorable condition and had to be destroyed.

Peterborough—January, 1951—(1) disorderly conduct in a public house—(2) refusing to quit when asked to do so—(1) one month's imprisonment, (2) fined £2. Defendant, aged twenty-three and another man aged twenty-five who was also convicted, were refused liquor by the licensee and then threatened to smash the place up. They had started to implement their threat when the police arrived.

Clerkenwell Magistrate's Court—January, 1951—(1) assault, (2) using insulting words during employment as a tram conductor, (1) fined £5, and to pay £3 3*s.* costs. (2) fined 40*s.* Defendant, a twenty-nine year old tram conductor, told a passenger that he had kept the tram waiting for him and that he might have the decency to say, "Thank you." An argument followed. The passenger was a police constable off duty.

Hendon—January, 1951—selling pottery at an excessive price (eleven summonses), failing to furnish invoices (two charges). Defendant fined a total of £59, and to pay £30, costs. Defendant obtained £23, above the maximum permitted prices.

Wilts Quarter Sessions—January, 1951—obtaining £10, by false pretences—nine months' imprisonment. Defendant, a forty year old caravan dweller, persuaded a vicar to buy peat at £3, a thousand blocks. Defendant told vicar's wife that he had delivered 3,000 blocks and asked for £10, which she gave him. Vicar counted the blocks and found that there were only 980.

QUOTATION

Isn't it rather absurd
That the legal author's word
Is only considered sound
When he's below the ground,
While you can quote what a Judge said
Long before he's dead?

J.P.C.

REVIEWS

Underhill's Law Relating to Trusts and Trustees. Tenth Edition. By C. Montgomery White, K.C., and M. M. Wells. London : Butterworth & Co. (Publishers) Ltd. Price 75s. net.

For more years than many practitioners can remember, *Underhill on Trusts and Trustees* has been the work to which students would be sent, and lawyers would go, for information about trusts, at once compendiously stated and fully set out. All editions up to the ninth, which appeared late in 1939, were produced by or under the supervision of Sir Arthur Underhill himself, so that the learned editors of this present tenth edition have borne an additional responsibility. They have borne it worthily. The lines which the learned author laid down in previous editions are now well known to everyone in legal circles. What the Master of the Rolls said seventy years ago is as true as ever : that if we want to know what the rules of equity are we must look rather to more modern than to more ancient cases ; by this time a good deal of what Sir George Jessel enforced in the reforming epoch of the seventies and eighties has itself passed into the realm of "ancient cases." The aim of *Underhill* has always been to formulate the principles of the law of trusts, leaving it to the law libraries to supply the innumerable illustrations, built up since the time of Hardwicke in the form of decided cases. The formless mass of equity, as it must have appeared to the newcomer in Jessel's time, has so far as it concerns trusts been brought by *Underhill* into the form of a code, where it is reasonably easy to discover what the student or practitioner requires on every matter which arises. In the interval since the previous edition, the law of trusts has developed, as it was bound to do, looking to its subject matter, even under war conditions. The editors refer in the preface particularly to the litigation arising under the will of Caleb Diplock which has given an opportunity for a review of several principles of equity. We dealt with the first round of this protracted battle in an article at 111 J.P.N. 460 : the next round in [1948] 2 All E.R. 318 will be found in *Underhill*, and a House of Lords decision, affecting a share of Diplock's fortune which had been given to Westminster Hospital, was reported in *The Times* while this review was being written, under the title *Ministry of Health* v. *Simpson and Others*. Whether there are still more decisions to come we do not know. The *Westminster Hospital* case shows that no text book writer can ever achieve his ambition of being completely up to date, but this tenth edition of *Underhill* has certainly achieved it as at the date chosen by the publishers, namely March 1, 1950, while the date of publication (October 2, 1950), is not too far behind in view of the difficulties which, as the Lord Chancellor has recently reminded the profession and the public, still beset even the Government with all the resources it possesses, when it is bringing out a major legal work. In speaking of other works concerned with trusts we have referred before now to the remark made to Maitland by a great continental lawyer, who said he could not understand the English law of trusts—could not, that is to say, see where trusts, regarded as a separate branch of law, fitted in to the general framework. As time goes on, and the consequences, not all worked out even in England, of the fusion of law with equity are seen, it probably becomes more difficult for the lay client to appreciate how and why a breach of trust differs (for example) from a breach of contract. Modern habits of life seem to bring into existence fiduciary relationships even in the law of tort, which to the lawyer's eye do not look like trusts. The present work will, at any rate, make it clear to the foreign lawyer who gets hold of it, and to the English student who must be made to get hold of it, what the specific law of trusts does. A large division of the book is entitled Expressed or Declared Trusts, and this is followed by Constructive Trusts, with particular emphasis upon Resulting Trusts. The reader who has mastered the first two hundred pages of the book will then have obtained a complete picture of what trusts are and how they come about, not an unimportant preliminary since, in practice, one is very apt to think more of the trustee's duties and powers after the trust has come into existence. These matters, again, are treated quite exhaustively but as concisely as the subject allows, in the fourth division of the book, which covers also the appointment and retirement of trustees and other ancillary matters. Finally, the book deals with Breach of Trust, under the headings of liability and then of Protection of Trustees. We have seen somewhere a trustee described as a person who is allowed to dispose of the property of other people at their expense, not a complete description but one not devoid of truth, as this division of the book will show. We have attempted, in this account of the arrangment of the new edition, to present an introduction to the book for those who are not already acquainted with it. There can be few such among our legal readers. For the majority, who have known the work in its previous editions, perhaps the most helpful thing to say is that it maintains the standard which Sir Arthur Underhill established, and has the further advantage of forming part of *Butterworths Modern Text Book* series with its arrangement for periodical supplements, its good paper and clear printing, and its binding calculated to withstand the strain of daily use.

English Local Government. By Herman Finer. London : Methuen & Co. Ltd. Price 36s.

This is the fourth revised edition of a work which has been recognized as authoritative since it was first published seventeen years ago. The author has special knowledge of the subject not only in this country but in the United States, Canada and parts of Europe. It is a book which is difficult to review as it is so comprehensive and goes into so much detail. In Part I the author describes the place of local government in modern England and the main problems involved, and emphasizes that although policy and standards are laid down by Parliament and the government departments, nothing is more important or more characteristic than the previous collaboration of the Minister and Parliament with the representative associations of local authorities.

Part II deals with the area and functions of local government, and contains a detailed description of the scope of county, county borough, and county district councils. As showing the need for revision of county areas, which is recognized on all sides, it is mentioned that the majority of the Shires are today practically the same as they were in the days of William the Conqueror, and were mainly determined by military purposes. In discussing the future of areas, the author shows that the tendency has been from the small to the large area and is of opinion that in so far as persuasion can have an influence, it should be the objective of local government reform to work towards the region, particularly as the days have gone by when the establishment of regions could be considered from the mainly local standpoint. In expressing this view the author is, of course, dealing with a very controversial matter in which, at present at any rate, there seems to be little likelihood of any general agreement.

In Part III there is a very useful chapter on the internal organization of local authorities, in which what is rather a complicated procedure to the outsider is very clearly explained, particularly for the benefit of students and also, we suggest, for candidates seeking election on local authorities, or newly elected councillors. Even members who have been on a council for some time would be well advised to read in a work like this of what their council can and cannot do. In discussing the membership of local authorities, reference is naturally made to the question of co-option when the author notes an unfortunate tendency in some places to co-opt people, not because they are expert or have a special interest in a particular service, but as a compensation prize to candidates who have been defeated at a local election.

On the actual practice of local government, the author repeats his criticism in the first edition of a tendency towards a disintegration of the work of local authorities and of the dangers of over-departmentalism both from the official and member angle. We suggest there is, however, an opposite point of view with perhaps an equal danger. Some members of local authorities tend to serve on too many committees which, particularly if they are busy men and women, makes it impossible for them to grasp the subjects coming before each committee and even sometimes to read the circulated papers.

After dealing with the functions of the authority, the functions of the various officials from the clerk of the council downwards are described and a comparison is drawn with the practice prevailing in certain other countries. In referring to the qualifications required of a town clerk, the author makes the pertinent point that if university graduates are tempted by some of the plums in the local government service, they should take their law examinations and obtain a few years' experience in the clerk's department ; and that they have no right to expect that local government should be re-made to suit the convenience of antiquated teaching traditions at Oxford or Cambridge. On the question of qualifications of the local officials generally, including the technicians, it is suggested that they should be encouraged to take the diploma of Public Administration as a stimulation to thought and as a means of supplying the incentive to co-ordination in each unit to be co-ordinated. This suggestion gives point to the recent campaign of the Institute of Public Administration for local authorities to become corporate members of the Institute when, if this is successful, they may perhaps be inclined to give more encouragement to their staff to obtain the diploma.

Part IV of the book, which deserves much fuller treatment than we have space to give, deals with the main subjects of central-local relationships, the character of the problem, and the attitude of the central authority. The means of exercising control, such as by granting aid or inspection, are discussed. This part of the book is of particular interest just now in the light of the deliberations of the Local

Government Manpower Committee whose report was presumably issued after the book went to press. Alterations are bound to take place in the structure of local government sooner or later. The unfortunate disappearance of the Local Government Boundary Commission has not made the problem any easier. A book written objectively, such as this work by Professor Finer, must therefore be helpful to those who, in their various capacities, are trying to suggest solutions and to students who may be the local government administrators of the future.

The Law and Custom of the Sea. Second Edition. By H. A. Smith. London: Stevens & Sons, Ltd. Price 12s. 6d. net.

We reviewed the first edition of this book on March 12, 1949. The appearance so soon of a second edition is, we hope, an indication that it has met the wide circulation it deserves. Dr. Smith began the papers which have been embodied in the book when called upon to lecture to naval officers at Greenwich, and designed it in the first place for their requirements. Until recent retirement he was Professor of International Law in the University of London, and the work can be cordially recommended both to the lawyer and to the naval or merchant navy officer, who wishes to know about rules of war affecting his professional duties. Dr. Smith does not shirk the intellectual and practical difficulties created by the Nuremburg Trials and similar events. It is only too likely that even while this review is being read British and American officers will be suffering in Asia the boomerang effect of doctrines there laid down, by victorious powers who did not envisage the possibility of being otherwise than victorious within the lifetime of the persons who were concerned directly or indirectly in the War Crimes Trials. It is too soon to assess the effects of Nuremburg on international law: it may not be possible to do so for another century and Dr. Smith speaks with due reserve, but it is at any rate satisfactory to find an authoritative voice like his pointing out the difficulties, which were shirked by Government spokesmen when Lord Cork, a naval officer, initiated an inconclusive debate last year in the House of Lords. Attention may particularly be drawn to the *Jaluit Atoll Case*, scarcely heard of in this country, and to its inconsistency with rules of law recognized in peace. In his preface to the second edition Dr. Smith confesses (his own word) that in the first edition he had deliberately avoided this distasteful and depressing subject, but he now feels that its discussion cannot be avoided. In this review we have concentrated our attention on this new chapter, since the remainder is not greatly altered from the edition we reviewed so recently. It is enough to say here that it is eminently readable; persons who care for the theory and philosophy of law, even apart from the primary purpose of the book, should obtain and ponder it.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

APPEALS TO QUARTER SESSIONS

The case of *R.* v. *Faithful* (Court of Criminal Appeal) is referred to in your Notes of the Week on p. 714 of last year's volume and also on p. 721. This case, although deciding a simple point, is not quite so straightforward as it first appears. The case divides quarter sessions appeal courts in the country into two categories (*a*) those which sit frequently and (*b*) those which sit infrequently. In so far as appeal courts which sit frequently are concerned, the appeal committee, before it passes sentence, must satisfy itself that (*a*) no notice of appeal has been given, and (*b*) that the time for appealing has expired. The report in the *Weekly Notes*, December 1, 1950, p. 550, then contains these words "If the time for appealing has not expired . . ." This seems somewhat inconsistent because as previously stated sentence should not be passed until the time for appealing has expired.

It is interesting to note that Faithful pleaded guilty before the justices and to remark that a person has no right of appeal to quarter sessions against his conviction if he pleaded guilty before the court of summary jurisdiction (Criminal Justice Act, 1948, s. 36) unless he can show that he pleaded guilty under a misapprehension or if the plea was ambiguous (*R.* v. *Campbell* (1921) (85 J.P. 189); *R.* v. *Golathan* (1915) (79 J.P. 270)).

It seems to me, viewing the case of Faithful as a whole, that in so far as appeal courts which sit frequently are concerned, the clerk of the peace, in cases where the accused pleaded not guilty, should not include the case in a list for hearing until the time for appealing has expired. In so far as those cases where the accused has pleaded guilty are concerned, these could be dealt with at the next available sitting of the court, even though the time for appealing has not expired in which case the court would inquire if the accused intended to appeal.

In so far as appeal courts which sit infrequently are concerned, it should not be overlooked that the report refers to a case where the accused pleaded guilty, in which case if he intimated that he proposed to appeal he should be told of the length of time that might elapse and that he could not be granted bail. It is submitted that if the accused pleaded not guilty and intimated his desire to appeal then the question of bail is one for the justices and they should consider every aspect of the case before bail is refused.

Yours faithfully,
W. J. PIPER,
Deputy Clerk of the Peace.

Chelmsford.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

ROUGH JUSTICE

I have read with interest the article entitled "Rough Justice," by Mr. J. H. Burton, which appeared at pp. 718 and 719, 114 J.P.N.

Mr. Burton stated that "Though there is no statutory limitation on the amount which a local authority may raise by rate as a whole, rationing or limiting for specific purposes has been directed by public general Acts, many of which are still operative." He then proceeded to set them out in tabular form.

May I venture to suggest that there are several inaccuracies in this list, *e.g.*:

Allotments: In the case of allotments the limit of rate is now twopence (not 1½*d.*).—*See* s. 11 of the Allotments Act, 1950.

Bands and entertainments in parks: A local authority may incur an expenditure not exceeding the product of a rate of sixpence in the pound in providing bands and entertainments in parks.—*See* s. 132 of the Local Government Act, 1948.

Museums and gymnasiums: The rate limit with regard to libraries and museums provided under the Public Libraries Acts has now been removed.—*See* s. 4 of the Public Libraries Act, 1919. It is true that the limit of two-thirds of 1*d.* applies to museums provided and maintained under the Museums and Gymnasiums Act, 1891.

War memorials: Local authorities may incur reasonable expenditure in the maintenance and repair of war memorials, and are not limited by order of the Minister of Health. (*See* s. 133 of the Local Government Act, 1948.)

Coast Protection: A local authority does not now appear to be limited to the product of a 1*d.* rate. *See* Coast Protection Act, 1949.

Yours faithfully,
GERALD F. FOX,
Town Clerk.

Town Clerk's Office,
Tenby.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

ACQUISITION OF LAND: SOLICITORS' COSTS

I read your notes in the second column of 114 J.P.N. 745 in which the following sentence occurs:

> "Accordingly contracts signed on behalf of the Minister should provide, in respect of the payment of the vendor's solicitor's costs, for the payment of itemized charges."

Why say anything about this in the contract seeing that the point is covered by law in the absence of any agreement *inter partes* to the contrary; except of course it is perhaps prudent even to set out the law so that a purchaser may not be taken unawares.

Yours faithfully,
C. O. GOUGH,
Town Clerk.

28, Church Street,
Calne, Wilts.

[We suppose that the Minister's legal advisers think it wise to put the matter into the contract, because of the tiresome doubts which have so long been felt.—*Ed., J.P. and L.G.R.*].

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Animals—Stealing—Those which come within the Larceny Act, 1861, s. 21.*

I should be obliged if you would kindly explain when animals which are wild by nature fall, when stolen from captivity, within s. 22 of the Larceny Act, 1861, and when within s. 2 of the Larceny Act, 1916.

My own interpretation is that if any animal wild by nature is captured whilst alive, and is subsequently stolen whilst in captivity it is an offence against s. 2 of the Larceny Act, 1916 if the animal would have served for the food of man, *e.g.*, a rabbit, but if it would not have served for food of man, *e.g.*, a monkey and the other animals mentioned in footnote (*h*) to s. 22 of the Larceny Act, 1861, *see Stone*, then it is an offence against s. 22 of the Larceny Act, 1861. JUP.

Answer.

Our correspondent probably means to refer to s. 21 and not s. 22 of the 1861 Act. We think his interpretation is a correct one. According to 1 *Halsbury*, 534, " at common law domestic and tame animals such as horses, cattle, oxen, sheep, poultry, peacocks *and all animals which are fit for human food* (the italics are ours) and their young and eggs were the subject of larceny. Dogs of all kinds, cats and animals of a base nature were exceptions."

Although so far as animals normally wild which have been reduced to captivity are concerned we have no instance in mind, it must be remembered that s. 2 of the Larceny Act, 1916, does not apply when the stealing in question is punishable under any other statutory provision.

2.—Criminal Law—*Quarter sessions—Appeals and committals for sentence from summary courts—Practice as to supplying members of appeal committee with documents which give directly or by implication information about an appellant's past record.*

Recently I sat as a member of an appeal committee to deal with a man committed for sentence under s. 29 of the Criminal Justice Act, 1948, who had appealed against conviction. In accordance with the usual and generally convenient practice members of the committee were supplied beforehand with copies of the documents relating to a person's appearance before the court. In the result, however, and especially as the appeal in great measure turned on the weight to be given to the appellant's own evidence, the committee were seriously embarrassed by their unavoidable knowledge of his bad record.

In such cases is there any impediment to not informing an appeal committee of an appellant's committal for sentence unless and until the appeal against conviction is dismissed? I might perhaps add that in this instance the appeal was allowed. J. SUN.

Answer.

We cannot be sure of the practice of many courts—it varies from place to place. As we see it, to have one procedure for appeals in cases where there is also a committal for sentence and another for those in which sentence has been passed by the summary court would tell members of the appeal committee, by inference, that when the former procedure applied the appellant had a bad record. The only method, therefore, to achieve what our correspondent wishes would appear to be one by which *in every case* the appeal committee see no papers and are told *nothing* other than that the appellant before them has been convicted of a certain offence and is appealing against his conviction. We do not know whether, in practice, such a method could be adopted, or whether it would find favour with justices and clerks of the peace.

3.—Education Act, 1944—*School attendance—Registered pupil—Venue.*

My attention has been drawn to the question and answer at 114 J.P.N. 423. The questioner and the reply to the question appear to have overlooked the provision contained in sch. 1 to the Education (Miscellaneous Provisions) Act, 1948, which was enacted to cover exactly the difficulty raised in the question. BRUM.

Answer.

The enactment in the Act of 1948 was not overlooked in our reply or (we think) in the query at p. 423. As the section was enacted in 1944, a parent might have escaped between the two authorities. The new provision ensures that it is the duty of one or the other to prosecute. But the section does not say in which area the prosecution is to take place, which was the point of the question put to us at p. 423.

4—Husband and Wife—*Maintenance order—Wife becomes insane—Liabilities of husband under order whilst wife in State mental hospital—Variation of order—Service of summons.*

I would refer you to P.P. 6 at 113 J.P.N. 368 and P.P. 4 at 113 J.P.N. 491. The Master in Lunacy has appointed a receiver in this case, and under an order of the Court of Protection sums are paid by me as court collecting officer to the receiver. Although the maintenance order made by my court required the payment of a weekly sum of 30*s.* the Assistant Master in Lunacy " agrees on behalf of the patient to a reduction in the allowance payable by the patient's husband to 15*s.* a week whilst the patient is maintained free under the National Health Insurance Act." This, of course, is not binding on my court, and to regularize the matter the husband now seeks a variation of the order from 30*s.* to 15*s.* per week, which latter sum he is quite willing to pay.

The question is, who can accept service on behalf of the patient? The order of the Court of Protection contains a paragraph which authorizes the receiver therein appointed " to receive all notices affecting the patient or her property." I am doubtful whether this wording is sufficient to enable service of a summons of a court of summary jurisdiction to be properly effected on the receiver, and on expressing this view the Court of Protection has asked whether service could be effected on the physician superintendent of the hospital as the person having the control of the patient. I was, however, not prepared to agree to this further suggestion.

A further communication has now been received from the Court of Protection in which it is stated that it is proposed to issue a sealed authority in the following form :

> " AB, the receiver of the income of the above-named patient, CD, is hereby authorized in the name and on behalf of the said patient to take such steps as he may be advised to defend any proceedings by the patient's husband, EF, in the petty sessional division of X county of Y to vary the order made in the magistrates' court at Z aforesaid on the . . . "

I have been asked if these authorities would be sufficient to meet the requirements of the court as to :

(*a*) acceptance of service of summons for variation of the order, and

(*b*) to appear and accept the decision of the matrimonial court on behalf of the patient.

I shall be obliged if you will express your opinion as to whether such an authority could be accepted, so enabling my court to proceed with the variation of the original order. SIV.

Answer.

The proposed method of service does not conform to summary procedure as laid down by statute, and therefore it might be argued that there is no jurisdiction to hear any application. If that is the position, it leaves the husband at a disadvantage from which there seems no way out. He may not unreasonably say he is willing to comply with a reduced order, which will no doubt benefit his wife, but that he does not propose to do so while he is left under a legal liability for the full order, with no guarantee that he will not some day be called on to pay up arrears.

It is so hard upon the husband, and so much against the true interests of the parties, to hold that nothing can be done, that we are prepared to advise that the proposed method of service should be acted upon and the summons issued and heard. We think the authority proposed to be issued by the Court of Protection may be acted upon in respect of both (*a*) and (*b*), though we admit we cannot quote any decision of the High Court on the point.

5.—Land—*Tenancy on unknown terms—Fencing—Obstruction of abutting stream.*

The urban district council for many years have paid rent for land used as a children's playground. No record can be found of the original arrangements, which may have been by correspondence. In the course of years the fencing has become dilapidated, and the owner requires that it should be properly maintained. In the absence of any information as to original agreements, your opinion is sought as to whether there is any obligation upon the tenant to maintain the fences. The present owner says that no one in his senses would let land as a children's playground for practically a nominal rent, and retain the obligation to repair fences. The council say that they would not have kept the land if they had thought that the heavy responsibility for repair of fences would fall upon them. The same

land has on two sides of it a natural stream, the other side of which is a public highway. The stream is partly obstructed by large stones, which appear to have come from the destroyed walls on each side. The cause of the destruction seems to be through children making a short cut to the playground, and resultant damage once the walls were breached. Is anyone liable to clear the stream? The owner contends that the council are liable as occupiers each side, and points out that the public have caused the damage and obstruction. The council suggest that the owner should pay half of the cost as owner on one side, and they should pay the other half as owner on the other. Your opinions would be appreciated. ART.

Answer.

Prima facie the owner can give the council notice to quit, on the footing that the tenancy, of which no record now exists, is from year to year. That is his remedy; they must either come to terms with him or clear out. On the other hand, they cannot compel him to fence the land: if they want to hold on to the land, and want it fenced, they must do it themselves. It is one of those cases, much commoner than lay persons suppose, where nobody is responsible, in the sense of being compellable. In regard to the stream, there are several possibilities. Other authorities may be interested, but one possibility is that there is or soon will be a nuisance within s. 259 of the Public Health Act, 1936. Even though para. (*b*) in subs. (1) make it impossible to use that section here, s. 265 can apparently be used, and seems to be one way of securing a contribution from the owner: *see Lumley's* notes on the two sections.

6.—Landlord and Tenant—*Rent Restrictions Acts—Alternative accommodation—Same premises with reduced ancillary accommodation.*

With reference to P.P. 5 at 114 J.P.N., I submit that the landlord could seek possession under s. 3 (1) (*b*) of the 1933 Act on the ground that suitable alternative accommodation is available for the tenant, such alternative accommodation being the same dwelling-house with the smaller garden. It would then be for the court to consider whether or not it was reasonable to make an order for possession.

AURY.

Answer.

With respect we do not agree. The contention was in effect discussed by the learned county court judge, whose judgment does not seem to have been appealed against, in *Gratton* v. *Spence* (1948) E.G.D. 275; 98 L.J.N. 603, where he pointed out that acceptance of the contention would enable the court to encroach materially on the rights given to a statutory tenant by s. 15 (1) of the Act of 1920.

7.—Licensing—*Alteration of petty sessional division boundary—Renewal of licence in error by justices of division in which premises were situated before boundary alteration.*

In 1934 an order was made under the Local Government Act amending the boundaries of certain parishes in this county which necessitated slight alterations in petty sessional divisions. It has now come to light that there are two licensed houses in a village affected by this order of which particulars have never been transferred from the licensing register in the neighbouring petty sessional division to that of my own. During the period that has elapsed since the order was made these two licences have been renewed annually by the justices of the neighbouring division although the licensed premises were no longer in their licensing district.

I should be pleased to have your views on the following:

(i) Are the licences so renewed valid or have they lapsed?

(ii) If you consider the licences valid would it be correct to transfer particulars into my register with a view to my justices renewing the licences at the next general annual licensing meeting? NAET.

Answer.

This is a new and difficult point upon which we are unable to find any authority or guidance. Without an opportunity of perusing the order to which our correspondent refers, we assume that it has been made under s. 141 of the Local Government Act, 1933, and has the effect that certain parishes, included in the aggregation of parishes which combine to form the petty sessional division, have had their boundaries enlarged so as to take in an area which previously formed part of an adjacent petty sessional division. We assume that the order did not refer in terms to an enlargement of the petty sessional division boundaries but that this is accepted as flowing consequentially from the order made under the Local Government Act without the necessity for any formal order under the Division of Counties Act, 1828. We think that this view would be upheld; but we would hesitate long before we advised that licences had lapsed for want of renewal by the proper renewal authority in circumstances where renewals had been granted (even if erroneously) in good faith and acted upon in good faith by the excise authorities for sixteen years.

Thus, our answers to our correspondent's questions are:

(i) We would regard the renewals as valid.

(ii) This will be correct.

8.—Lunacy—*Debt due to mental patient—Receipt for payment.*

An intestate's estate is divisible among four brothers. One brother is detained in a mental hospital under a reception order and no receiver of his estate has been appointed. So far as the estate solicitors are aware he has no other property, but it is desired to pay the sum of approximately £40, being one-quarter share of the intestate's estate, to the lunatic beneficiary who is not so mentally affected as not to appreciate the nature of his acts. Formerly it would have been a simple matter to have paid the money to the poor law authorities responsible for the cost of his maintenance, taking the receipt of the relieving officer. It is desired to avoid if possible payment into court as such would be of little benefit to the beneficiary. Your opinion is asked as to whether the administrator will have a good discharge by taking the receipt of his lunatic brother or a receipt of the lunatic brother's wife. AWO.

Answer.

On the information given, we should under the earlier law have hesitated to advise that the relieving officer's receipt was effective, though in practice there might have been no risk in taking the course mentioned. If the patient appreciates the transaction (this being a question of fact: *Jenkins* v. *Morris* (1880) 42 L.T. 817; *Roe* v. *Nix* (1893) 68 L.T. 26) we think his receipt should be taken. Once again, we doubt whether his wife's receipt is effective, though there would ordinarily be no risk in accepting it, if his own cannot be obtained.

9.—Public Health Act, 1936—*Public and private sewers—Drains completed before the Act.*

As will be seen by the enclosed plan three existing separate properties are served by the same drain, pumping station and pumping main, which was constructed before the Public Health Act, 1936, came into operation. On October 1, 1937, the whole of the property was in one ownership and occupation, within the same curtilage, and included in one rating assessment. The division of the property was made some years after October 1, 1937. The owners now claim that the drain, etc., are vested in the local authority.

Do you agree:

(*a*) That the drain in question was not a sewer within the meaning of the Public Health Act, 1875, and therefore did not become vested in the local authority under s. 20 of the 1936 Act?

(*b*) That the drain, plant, etc., may now have to be regarded as private sewers, but are not public sewers?

(*c*) That s. 17 of the 1936 Act is not applicable as the construction of the drains, etc., was completed before October 1, 1937?

(*d*) That the powers of s. 15 (1) (iii) of the 1936 Act are exercisable at the discretion of the council and are not obligatory? A.B.C.

Answer.

We agree on all points.

10.—Summary Jurisdiction—*Allocation of penalty—Conviction under Debtor's Act, 1869, s. 13 (1)—Unappropriated penalty.*

I should be obliged for your opinion on the following point:

A defendant was convicted for that he, in incurring a debt to pay the sum of £3 to one X did unlawfully obtain credit of the said X under certain false pretences contrary to s. 13 (1) of the Debtors Act, 1869. The penalty for this offence is imprisonment not exceeding one year.

The court, however, decided to invoke s. 4 of the Summary Jurisdiction Act, 1879, and imposed a fine in lieu of imprisonment.

The front page of the *Return of Exchequer Fines* states:

"(2) If a fine is imposed in lieu of imprisonment by virtue of s. 4 of the Summary Jurisdiction Act, 1819, the Act of Parliament under which the conviction took place should be cited."

I cannot find any authority for paying this fine into exchequer fund, so I am uncertain whether to do this or to treat the fine as unappropriated and pay same into the fees fund. J.B.F.R.

Answer.

We do not understand in this case the reference to a penalty of twelve months' imprisonment and to s. 4 of the Summary Jurisdiction Act, 1879.

Twelve months is the maximum sentence if the case is dealt with on indictment. It is triable summarily only by virtue of the Criminal Justice Act, 1925, s. 24 and sch. 2. The accused consent's to summary trial is essential and the maximum penalty, by virtue of s. 24 of the 1925 Act, is six months' imprisonment and/or a fine of £100.

We agree that if a penalty is imposed it is an unappropriated one, and is payable into the fees fund.

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